

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

MARVIN HARRIS, JR. ,

Petitioner,

v.

Case No.: 2:23-cv-319-SPC-KCD
2:20-cr-134-SPC-NPM

UNITED STATES OF AMERICA,

Respondent.

_____ /

OPINION AND ORDER

Before the Court is the United States of America's Motion to Dismiss Petition Based on Lack of Jurisdiction (Doc. 5). The government moves the Court to dismiss Petitioner Marvin Harris, Jr.'s Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody (Doc. 1) because it is premature. Harris did not respond, so the Court treats the motion as unopposed. *See* M.D. Fla. 3.01(c).

§ 2255 is "intended to afford strictly post-conviction relief." *United States v. Casaran-Rivas*, 311 F. App'x 269, 273 (11th Cir. 2009). A district court lacks jurisdiction to consider a § 2255 motion until the conviction becomes final. *Id.* When a defendant files an appeal—as Harris did—his conviction becomes final when the Supreme Court denies certiorari or issues a decision, or when the 90-day period to petition for certiorari expires. The time for Harris to seek


certiorari has not yet expired, so his conviction is not final.¹ The possibility for further direct review remains open. “The appropriate action for addressing a § 2255 motion filed during the pendency of the direct appeal is to dismiss the § 2255 action without prejudice.” *Blair v. United States*, 527 F. App’x 838, 839 (11th Cir. 2013).

Accordingly, it is now

ORDERED:

Petitioner Marvin Harris, Jr.’s Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody (Doc. 1) is **DISMISSED without prejudice**. The Clerk is **DIRECTED** to terminate any pending motions and deadlines, enter judgement dismissing Harris’s § 2255 action without prejudice, and close the § 2255 case. Harris may file a § 2255 motion after his conviction becomes final.

DONE and ORDERED in Fort Myers, Florida on July 12, 2023.


SHERI POLSTER CHAPPELL
UNITED STATES DISTRICT JUDGE

SA: FTMP-1

Copies: All Parties of Record

¹ If Harris does not petition the Supreme Court for certiorari, his conviction will become final on July 14, 2023. This Court will then have jurisdiction to consider a § 2255 motion. But the Court will dismiss this § 2255 action—rather than wait for the conviction to become final—to ensure the Court’s eventual judgment is not subject to attack for lack of jurisdiction.